

No. 15360

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United States  
Court of Appeals  
for the Ninth Circuit

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UNITED STATES OF AMERICA,

Appellant,

VS.

MAUD L. ELFER,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Western District of Washington,  
Northern Division.

FILED

JAN 24 1957

PAUL P. O'BRIEN, C



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Appeal from the United States District Court for the  
Western District of Washington,  
Northern Division.



## NAMES AND ADDRESSES OF ATTORNEYS

Counsel for Appellants, United States of America:

CHARLES P. MORIARTY,

United States Attorney;

EDWARD J. McCORMICK, JR.,

Assistant United States Attorney;

RICHARD F. BROZ,

Assistant United States Attorney,

1012 United States Court House,

Seattle 4, Washington.

Counsel for Appellee, Maud L. Elfer:

RICHARD F. SCHACHT,

Matheson Building,

Mount Vernon, Washington.



United States District Court, Western District  
of Washington, Northern Division

No. 150

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MAUD L. ELFER,

Defendant.

### COMPLAINT

Comes now the United States of America by and through Charles P. Moriarty, United States Attorney, Western District of Washington, and Edward J. McCormick, Jr., Assistant United States Attorney, and for cause of action against the defendant herein complains and alleges as follows:

#### I.

Jurisdiction lies under 28 U.S.C. 1345. Defendant resides at LaConner in the Northern Division of the Western District of Washington.

#### II.

Prior to and including the month of June, 1943, the defendant Maud L. Elfer was the wife of a member of the United States naval forces and receiving family allowance as wife in the sum of fifty dollars (\$50.00) per month under the provisions of the Servicemen's Dependents Allowance Act of 1942 (56 Stat. 381). In the month of June, 1943, Kenneth H. Schlafer, the serviceman by reason of whose

Kenneth H. Schlafer and as such said parties constituted a marital community under the laws of the State of Washington. That the indebtedness claimed in Plaintiff's complaint, if it be an indebtedness, is one as against the then marital community composed of the Defendant and Kenneth H. Schlafer, at the time of said payments, and was not a personal debt of or claim against the Defendant.

### Third Defense

#### I.

If Defendant is indebted to Plaintiff for the moneys claimed in its Complaint, she is indebted to it jointly with Kenneth H. Schlafer. Kenneth H. Schlafer is alive; is a citizen of the State of Washington and a resident of this district, and is subject to the jurisdiction of this Court, as to both service of process and venue; can be made a party without depriving this Court of jurisdiction of the present parties, and has not been made a party.

\* \* \*

Wherefore Defendant prays that Plaintiff's complaint be dismissed and that it take nothing thereunder, and Defendant recover her costs and disbursements herein.

/s/ RICHARD F. SCHACHT,  
Attorney for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed September 8, 1955.



[Title of District Court and Cause.]

**MOTION TO STRIKE AFFIRMATIVE  
DEFENSES**

Comes Now the United States of America, by and through Charles P. Moriarty, United States Attorney for the Western District of Washington, and Edward J. McCormick, Jr., Assistant United States Attorney for said district, and moves to strike Defendant's Second, Third and Fourth Defenses as being insufficient in law. This motion is based upon the pleadings on file herein and Memorandum submitted herewith.

/s/ CHARLES P. MORIARTY,  
United States Attorney;

/s/ EDWARD J. McCORMICK, JR.,  
Asst. United States Attorney.

[Endorsed]: Filed May 26, 1956.

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[Title of District Court and Cause.]

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

This matter coming on regularly for hearing this day before the undersigned Judge of the above-entitled Court, the Plaintiff being represented by Edward J. McCormick, Jr., Assistant United States Attorney for the Western District of Washington, and the Defendant, Maud L. Elfer, being present and being represented by Richard F. Schacht, her

attorney, and argument having been made on Plaintiff's motion to strike Defendant's second, third and fourth affirmative defenses and the Court having denied the motions with leave to renew at the conclusion of trial and the trial of the cause proceeding, evidence having been introduced and both sides having rested, and argument presented, and the Court having sustained Plaintiff's motion to strike Defendant's fourth affirmative defense, the Court now makes the following:

### Findings of Fact

#### I.

Defendant, Maud L. Elfer, resides at LaConner, in the Northern Division of the Western District of Washington.

#### II.

Defendant, Maud L. Elfer, was married in 1930 to one Kenneth Schlafer. On June 19, 1942, the said Kenneth Schlafer enlisted in the United States Naval Reserve. On June 25, 1942, Kenneth Schlafer was called to and reported for active duty in the United States Navy. Following his reporting for active duty the Defendant, Maud L. Elfer, then Maud Schlafer, began receiving and continued to receive a family allowance as wife in the sum of \$50.00 per month under the provisions of the Servicemen's Dependents Allowance Act of 1942 (56 Stat. 381). In July, 1943, Kenneth Schlafer was promoted to the grade of Boatswain Mate 2nd Class in the United States Navy. Said grade of Boatswain Mate 2nd Class was one of the first three pay grades

within the meeting of the Servicemen's Dependents Assistance Allowance Act of 1942. Thereafter, from July, 1943, to and including May, 1945, for a period of twenty-three months, the dependent's assistance allowances continued to be paid to the said Maud L. Elfer, then Maud Schlafer, at the rate of \$50.00 per month, the total payments of \$1,150.00.

III.

That on May 5, 1947, the said Maud L. Elfer, then Maud Schlafer, and Kenneth Schlafer were divorced by decree of the Superior Court of Skagit County, said final divorce decree being granted and being effective on that day, to wit: May 5, 1947.

IV.

That the said Kenneth Schlafer still resides at Samish Island, Skagit County, Washington, within the Northern Division of the Western District of Washington.

Done in Open Court this 11th day of July, 1956.

/s/ JOHN C. BOWEN,

United States District Judge.

From the foregoing Findings of Fact the Court now makes the following:

CONCLUSIONS OF LAW

I.

That the Court has jurisdiction of the subject matter and the party, said Maud L. Elfer, to this action.

## II.

That the payments hereinbefore detailed under the dependents assistance allowance act of 1942 were, notwithstanding the title of the said Act and the fact that under Section 101 of said Act it is recited that the payments shall be made to dependents, were made to the marital community composed of Kenneth Schlafer and Maud Schlafer and were made as compensation in part for the military services of the said Kenneth Schlafer in the United States Navy and as such constituted community income.

## III.

That the payments of \$50.00 per month from July, 1943, to and including May, 1945, for a period of twenty-three months or a total payment of \$1,150.00 were made to the marital community of Kenneth Schlafer and Maud Schlafer in violation of law, inasmuch as Kenneth Schlafer in June, 1943, had been promoted to a non-commissioned grade in the United States Navy to which grade no such family allowance entitlement appertained.

## IV.

That Plaintiff has failed to join in this action as a party defendant the said Kenneth Schlafer and that for non-joinder of party defendants this action should be dismissed.

Done in Open Court this 11th day of July, 1956.

/s/ JOHN C. BOWEN,

United States District Judge.

Presented and approved by:

/s/ RICHARD F. SCHACHT,  
Attorney for Defendant.

Approved for entry by:

/s/ EDWARD J. McCORMICK, JR.,  
Asst. United States Attorney,  
for the Plaintiff.

[Endorsed]: Filed July 11, 1956.

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United States District Court, Western District  
of Washington, Northern Division

No. 150

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.

MAUD L. ELFER,  
Defendant.

### JUDGMENT

This matter coming on regularly for trial on the 5th day of July, 1956, and the Court having made and entered its Findings of Fact and Conclusions of Law, and in accordance therewith.

It Is Therefore Ordered that Plaintiff's cause of action be and the same is hereby dismissed without costs to either party.

Done in Open Court this 11th day of July, 1956.

/s/ JOHN C. BOWEN,

United States District Judge.

Presented and approved by:

/s/ RICHARD F. SCHACHT,

Attorney for the Defendant.

Approved for entry by:

/s/ EDWARD J. McCORMICK, JR.,

Asst. United States Attorney,  
for the Plaintiff.

[Endorsed]: Filed July 11, 1956.

Entered July 12, 1956.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that plaintiff herein, United States of America, hereby appeals to the United States Court of Appeals for the Ninth Circuit from that judgment entered in the above-entitled cause on the 11th day of July, 1956.

Dated this 5th day of September, 1956.

/s/ CHARLES P. MORIARTY,

United States Attorney.

/s/ EDWARD J. McCORMICK, JR.,

Asst. United States Attorney.

[Endorsed]: Filed September 7, 1956.



[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT  
COURT TO RECORD ON APPEAL

United States of America,  
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 as amended, of the United States Court of Appeals for the Ninth Circuit, and Rule 75(o) of the Federal Rules of Civil Procedure, I am transmitting herewith the following original documents and papers in the file dealing with the above cause as the record on appeal herein from the judgment filed July 11, 1956, and entered July 12, 1956, to the United States Court of Appeals for the Ninth Circuit, at San Francisco, said papers being identified as follows:

1. Complaint, filed June 3, 1955.
2. Summons with Marshal's return thereon, filed June 17, 1955.
3. Notice of appearance, filed June 29, 1955.
4. Answer, filed September 8, 1955.
5. Plaintiff's request for admissions, filed April 6, 1956.
6. Affidavit of service by mail, filed April 6, 1956.
7. Motion to strike affirmative defenses, filed May 26, 1956.

8. Plaintiff's memorandum in support of motion to strike affirmative defenses, filed May 26, 1956.

9. Affidavit of service by mail, filed May 26, 1956.

10. Plaintiff's supplemental memo in support of motion to strike affirmative defenses, filed June 7, 1956.

11. Notice of motion to strike defenses, filed June 7, 1956.

12. Affidavit of service by mail, filed June 7, 1956.

13. Defendant's memorandum of authorities in defense of plaintiff's motion to strike, filed June 29, 1956.

14. Findings of Fact and Conclusions of Law, filed July 11, 1956.

15. Judgment, filed July 11, 1956.

16. Notice of appeal, filed September 7, 1956.

17. Motion to extend the time for filing record on appeal and docketing, filed October 4, 1956.

18. Order extending time for filing record and docketing appeal, filed October 4, 1956.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for preparation of the record on appeal in this cause, to wit: Filing fee, Notice of Appeal, \$5.00. I further certify that the above costs have not been paid to me for the reason that the appeal herein is being prosecuted by the United States of America.



In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Bellingham, this 8th day of November, 1956.

[Seal]                      MILLARD P. THOMAS,  
Clerk;

By /s/ MARJORIE J. EDQUIST,  
Deputy Clerk.

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[Endorsed]: No. 15360. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Maud L. Elfer, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed: November 13, 1956.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

United States Court of Appeals  
for the Ninth Circuit

No. 15360

UNITED STATES OF AMERICA,

Appellant,

vs.

MAUD L. ELFER,

Appellee.

CONCISE STATEMENT OF POINTS

On appeal herein to the United States Court of Appeals for the Ninth Circuit, appellant United States of America, relies on the following points:

1. The District Court erred in denying plaintiff's motion to strike defendant's Second and Third Affirmative Defenses.

2. The District Court erred in holding that payments made in error and in violation of law to a member of a marital community were made to the marital community.

3. The District Court erred in holding that payments made in error and in violation of law to the female member of a marital community were made as compensation in part for military services of the male member of the marital community and as such constituted community income.

4. The Findings of Fact do not support the II and III Conclusions of Law.

5. The District Court erred in holding that Kenneth Schlafer was a necessary and indispensable party to the trial court proceedings.

6. The District Court erred in entering judgment of dismissal for failure to join a necessary and indispensable party.

/s/ CHARLES P. MORIARTY,  
United States Attorney;

/s/ EDWARD J. McCORMICK, JR.,  
Asst. United States Attorney,  
Attorneys for Appellant.

[Endorsed]: Filed December 5, 1956.

